

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOEL RICH and MARY RICH

Plaintiffs,

v.

FOX NEWS NETWORK LLC,  
MALIA ZIMMERMAN in her  
individual and professional capacities,  
and ED BUTOWSKY in his individual  
and professional capacities,

Defendants.

Civil Action No. 1:18-cv-2223

**CERTIFICATION OF  
DAVID B. HARRISON IN SUPPORT  
OF ED BUTOWSKY'S MOTION TO  
DISMISS**

I, DAVID B. HARRISON, of full age, hereby certify as follows:

1. I am an attorney-at-law in the State of New York and Partner of the law firm Spiro Harrison, attorneys for Defendant Ed Butowsky ("Butowsky").
2. I make this Certification in support of Butowsky's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and Fed. R. Civ. P. 12(b)(6).
3. Attached hereto as Exhibit 1 is a true and correct copy of the Agreement between Plaintiffs Joel Rich and Mary Rich and Rod Wheeler, dated March 14, 2017.
4. Attached hereto as Exhibit 2 is a true and correct copy of a Fox 5 DC news article dated May 17, 2017 titled "Family's private investigator: There is evidence Seth Rich had contact with Wikileaks prior to death."

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**SPIRO HARRISON**

Dated: May 14, 2018

s/David B. Harrison  
David B. Harrison

## **EXHIBIT 1**

**Capitol Investigations/Rod Wheeler Representative Agreement**

6710 Oxon Hill Rd. Suite 210

National Harbor, MD 20745

Ph. 202.805.8001

www.4capitol.com

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**Client: Joel Rich, Mary Rich, Aaron Rich**

**Case: Murder of Seth Rich**

**MPD CCN#16-113-797**

Joel Rich, Mary Rich, and Aaron Rich hereinafter referred to as "Client" do hereby agree to retain the services of Capitol Investigations/Rod Wheeler Private Investigation Consultants, which maintains its offices at 6710 Oxon Hill Rd., Suite 210, National Harbor, MD. 20745, for consultation and information gathering on behalf of the immediate family of Seth Rich on the following matter:

- Interview and investigate with regards to the official police investigation surrounding the death of Seth Rich. The representation shall not include media representation, unless otherwise permitted by the Client in writing.
- Granted rights and privileges as that of immediate family members of Seth Rich, with discussions with investigating agencies, i.e. Metropolitan Police Department and the FBI.

Capitol Investigations agrees to use its best efforts to investigate the matters set forth and perform the services for which it is being retained. Capitol Investigations makes no express warranties, assurances or guarantees with regards to the work that they will complete. Furthermore, the compensation payable to Capitol Investigations by the third party pursuant to this agreement are not in any way contingent upon or related to the results of the services performed or the information and details which are developed during the course of the investigation.

Capitol Investigations will not retain any additional clients in relation to the murder of Seth Rich. Capitol Investigations will not perform additional services (outside the scope of this agreement) that are related to the murder of Seth Rich.

This agreement shall be terminated immediately upon either party giving written notice to the other party.

Client further agrees to defend, indemnify and hold Capitol Investigations and/or its agents and employees harmless from any and all action, courses of action, claims, damages and demands of whatever type arising directly or indirectly from the services Capitol Investigations are being retained to perform pursuant to this agreement. The Client may, however, take actions against Capitol Investigations and/or its agents or employees for representations made to the media in violation of this agreement.

Capitol Investigations, LLC  
6710 Oxon Hill Road, Suite 210  
National Harbor, MD 20745  
(202) 805.8001

*RLW*

*WR*  
*AR* *JWR*



This agreement shall be binding upon Client's heirs, devisees, legatees, administrators, executors, successors, and assignees.

This agreement shall be construed and interpreted in accordance with the laws of the State of Maryland. If any portion of this agreement is determined to be invalid or unenforceable, the remainder of the agreement shall continue in full force and effect.

All information developed and submitted by Capitol Investigations LLC and provided to Client or Client's authorized representative shall be treated as strictly confidential and not released or disclosed to any third party without the prior written authorization of Capitol Investigations. Capitol Investigations shall not release any information regarding the investigation, including but not limited to findings, working theories or path forward to any third party without prior authorization by Client; unless that third party is an investigating agency, i.e. Metropolitan Police Department and the FBI.

Any and all compensation or fees associated with the investigation and this agreement shall be paid by Mr. Ed Butowsky, the "third party," in accordance with agreements made between Capitol Investigations and Mr. Ed Butowsky. Should any action involved in the investigation create a fee outside of this agreement, or should Mr. Ed Butowsky fail to pay fees, the Client is held harmless and will not be responsible for paying any fees, including outstanding balances.

This agreement constitutes the entire agreement between the parties with respect to the services to be provided by Capitol Investigations pursuant to this agreement. There are no other agreements, express, implied, written, oral or otherwise, except as expressly set forth herein. This agreement may only be modified in writing signed by both parties.

Dated:

3-14-17

CLIENT(S):

[Signature]  
[Signature]  
[Signature]

Dated:

3/14/2017

Capitol Investigations, LLC: By:

[Signature]

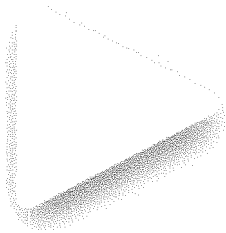
Capitol Investigations, LLC  
6710 Oxon Hill Road, Suite 210  
National Harbor, MD 20745  
(202) 805.8001

## **EXHIBIT 2**

**Local News** [DC News \(http://www.fox5dc.com/news/dc\)](http://www.fox5dc.com/news/dc) [Maryland News \(http://www.fox5dc.com/news/maryland\)](http://www.fox5dc.com/news/maryland) [Virginia News \(http://www.fox5dc.com/\)](http://www.fox5dc.com/)

## Family's private investigator: There is evidence Seth Rich had contact with WikiLeaks prior to death

Private investigator: There is evidence Seth Rich had contact with WikiLeaks prior to death



By: [Marina Marraco \(mailto:marina.marraco@foxtv.com?body=http://www.fox5dc.com/news/local-news/254852337-story\)](mailto:marina.marraco@foxtv.com?body=http://www.fox5dc.com/news/local-news/254852337-story)



POSTED: MAY 15 2017 10:41PM EDT  
UPDATED: MAY 17 2017 11:32PM EDT

**WASHINGTON - EDITOR'S NOTE (5/17/17):** We want to update you on a story you first saw on FOX 5 DC. We want to [make an important clarification \(http://www.fox5dc.com/news/255305734-story\)](http://www.fox5dc.com/news/255305734-story) on claims that were made by Rod Wheeler, the private investigator hired by Seth Rich's family, whose services are being paid for by a third party.

What he told FOX 5 DC on camera Monday regarding Seth Rich's murder investigation is in clear contrast to what he has said over the last 48 hours. Rod Wheeler has since backtracked.

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In an interview Monday, Wheeler told FOX 5 DC he had sources at the FBI confirming there was evidence of communication between Seth Rich and WikiLeaks. This is the verbatim of that exchange:



UP NEXT:

Seth Rich

FOX 5 DC: "You have sources at the FBI saying that there is information..."

WHEELER: "For sure..."

FOX 5 DC: "...that could link Seth Rich to WikiLeaks?"

WHEELER: "Absolutely. Yeah. That's confirmed."

In the past 48 hours, Rod Wheeler has told other media outlets he did not get his information from FBI sources, contradicting what he told us on Monday.

Since Rod Wheeler backtracked Tuesday, FOX 5 DC attempted incessantly to communicate with him, but he didn't return calls or emails.

On Wednesday, just before our newscast, Wheeler responded to our requests via a telephone conversation, where he now backtracks his position and Wheeler characterizes his on-the-record and on-camera statements as "miscommunication."

When asked if Wheeler is still working for Seth Rich's family, Wheeler told FOX 5 DC the contract still stands--ties have not been severed.

We reached out once again to the Rich family, and through a spokesperson the Rich family tells FOX 5 DC, "The family has relayed their deep disappointment with Rod Wheeler's conduct over the last 48 hours, and is exploring legal avenues to the family."

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### *Original story:*

It has been almost a year since Democratic National Committee staffer Seth Rich was murdered in the nation's capital. There have been no solid answers about why he was killed until now.

Rich was shot and killed last July (<http://www.fox5dc.com/news/172875295-story>) in Northwest D.C and police have suggested the killing in the District's Bloomingdale neighborhood was a botched robbery. However, online conspiracy theories have tied the murder to Rich's work at the DNC (<http://www.fox5dc.com/news/195969778-story>).

Just two months shy of the one-year anniversary of Rich's death, FOX 5 has learned there is new information that could prove these theorists right.

Rod Wheeler, a private investigator hired by the Rich family, suggests there is tangible evidence on Rich's laptop that confirms he was communicating with WikiLeaks prior to his death. Wheeler's services were offered to the family and paid for by a third party, according to a statement issued by the Rich family Tuesday which also



includes that "the private investigator who spoke to press was offered to the Rich family and paid for by a third party, and contractually was barred from speaking to press or anyone outside of law enforcement or the family unless explicitly authorized by the family."

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Now, questions have been raised on why D.C. police, the lead agency on this murder investigation for the past ten months, have insisted this was a robbery gone bad (<http://www.fox5dc.com/news/local-news/193631067-story>) when there appears to be no evidence to suggest that.

Wheeler, a former D.C. police homicide detective, is running a parallel investigation into Rich's murder. He said he believes there is a cover-up and the police department has been told to back down from the investigation.

UP NEXT:

"The police department nor the FBI have been forthcoming," said Wheeler. "They haven't been cooperating at all. I believe that the answer to solving his death lies on that computer, which I believe is either at the police department or either at the FBI. I have been told both."

When we asked Wheeler if his sources have told him there is information that links Rich to Wikileaks, he said, "Absolutely. Yeah. That's confirmed."

Wheeler also told us, "I have a source inside the police department that has looked at me straight in the eye and said, 'Rod, we were told to stand down on this case and I can't share any information with you.' Now, that is highly unusual for a murder investigation, especially from a police department. Again, I don't think it comes from the chief's office, but I do believe there is a correlation between the mayor's office and the DNC and that is the information that will come out [Tuesday]."

Wheeler told FOX 5 that he will provide us with a full report with the new details.

FOX 5's Melanie Alnwick spoke with D.C. Police on Tuesday and was told that Wheeler's assertion that a source inside the department told him that detectives were instructed to stand down regarding the Rich case was false.

The family sent Alnwick a statement on Tuesday with the following statement:

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"As we've seen through the past year of unsubstantiated claims, we see no facts, we have seen no evidence, we have been approached with no emails and only learned about this when contacted by the press. Even if tomorrow, an email was found, it is not a high enough bar of evidence to prove any interactions as emails can be altered and we've seen that those interested in pushing conspiracies will stop at nothing to do so. We are a family who is committed to facts, not fake evidence that surfaces every few months to fill the void and distract law enforcement and the general public from finding Seth's murderers. The services of the private investigator who spoke to press was offered to the Rich family and paid for by a third party, and contractually was barred from speaking to press or anyone outside of law enforcement or the family unless explicitly authorized by the family."

#### **PREVIOUS COVERAGE ON THE SETH RICH MURDER INVESTIGATION:**

**Family of DNC staffer Seth Rich seeking to raise money to help solve his murder**  
(<http://www.fox5dc.com/news/local-news/243115020-story>)

**Republican lobbyist says murder of DNC staffer Seth Rich linked to Russian operatives**  
(<http://www.fox5dc.com/news/238926113-story>)

**Mother of murdered DNC staffer Seth Rich pleads for public's help**  
(<http://www.fox5dc.com/news/218883023-story>)

**Republican lobbyist offers \$100K reward in murder of Democratic National Committee staffer Seth Rich**  
(<http://www.fox5dc.com/news/205324045-story>)

**WikiLeaks offers \$20K reward in murder of DNC staffer Seth Rich**  
(<http://www.fox5dc.com/news/187151061-story>)

**WikiLeaks founder addresses death of DNC staffer Seth Rich in Fox News interview**  
(<http://www.fox5dc.com/news/195969778-story>)

**Comments by Julian Assange fuel speculation that murdered DNC staffer may have been WikiLeaks source** (<http://www.fox5dc.com/news/187644313-story>)

**What happened during final hours slain DNC employee Seth Rich was alive?**  
(<http://www.fox5dc.com/news/local-news/193631067-story>)

**Parents of slain DNC employee make emotional plea to help find son's killer**  
(<http://www.fox5dc.com/news/local-news/185406373-story>)

**DNC honors murdered staffer Seth Rich with memorial bike rack outside of headquarters**  
(<http://www.fox5dc.com/news/211991353-story>)

**Vigil held for slain DNC staffer in Bloomingdale** (<http://www.fox5dc.com/news/173559189-story>)

**DNC employee fatally shot in Northwest DC** (<http://www.fox5dc.com/news/172875295-story>)